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C O N F I D E N T I A L MINSK 000731

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SUBJECT: KOZULIN VERDICT

Classified By: DCM Constance Phlipot for Reasons 1.4 B and D

¶1. (C) SUMMARY: On July 13, former opposition presidential candidate Aleksandr Kozulin was sentenced to five and a half years in a medium security prison on one charge of disturbing the peace and two counts of hooliganism. The six-day proceedings were at times chaotic and drew a heavy presence of Belarusian security forces. The court significantly curtailed the witness list in favor of the prosecution. Moreover, the government's case was substantiated by dubious victims, including members of Belarusian special forces who claimed injuries from violence allegedly incited by Kozulin. Kozulin's harsh sentence excludes him from participating in the 2011 presidential race and signals to the international community on the eve of the G-8 Summit that Belarus does not respond to Western pressure and threats. END SUMMARY.

¶2. (C) On July 6-13, former opposition candidate and head of the BSDP (Gramada) opposition political party Aleksandr Kozulin was tried on one charge of disturbing the peace and two counts of hooliganism (Part Two of Article 339 of Belarus' criminal code). The hooliganism charges were for his alleged attempts to force his way into the National Press Center on February 17 and his attempt to register for the All-Belarusian People's Assembly on March 2. The charge of organizing a group demonstration to disturb the peace (Article 342 of Belarus' criminal code) related to Kozulin's participation in a March 25 demonstration in protest of the presidential elections of March 17. During the March 2 and March 25 events, police severely beat Kozulin.

Chaos and High Security at Moskovsky Courthouse

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¶3. (C) As Poloff arrived at the courthouse on the morning of July 6, dozens of journalists and Kozulin supporters were shouting at court officers and pushing each other as they attempted to enter the building. OMON special riot police officers donning black berets and blue camouflage trousers were shouting back and preventing anyone from entering, except a small number of journalists who appeared to have some kind of passes. A few minutes later, a delegation of six EU diplomats arrived. The OMON officers initially refused them entry. After several minutes, the officers allowed the EU diplomats and Poloff to enter. Poloff followed and entered the courtroom the EU diplomats. Two OSCE representatives were also present.

¶4. (C) As Poloff entered the courthouse, former opposition presidential candidate Aleksandr Milinkevich arrived and

answered questions from journalists who struggled to remain standing amidst the tightly-packed crowd. During one interview Milinkevich described the trial as "politically motivated" and stated that he wanted to testify in Kozulin's behalf. According to independent media reports, Milinkevich claimed that he was refused entry.

¶15. (C) Inside the courtroom, there were four more OMON officers. After a few minutes, court officers ordered radio-television media out of the court. As the judge, Aleksey Rybakov, entered the courtroom, five regular uniform guards put Kozulin into a metal cage in the courtroom, a normal feature of Belarusian criminal proceedings. (Note: Rybakov was the judge wh sentenced opposition activist Nikolai Statkevic to two years restricted freedom.) At that moment, most of the audience stood and applauded (many wre wearing T-shirts with Kozulin's image). The udge complained about the number of family membes and other persons not directly connected with he case and threatened to clear the courtroom.

¶16. (C) The French Ambassador believed that the judge expelled foreign diplomats from the courtroom. (Note: Only a few diplomats remained at that time as most of the other EU Ambassadors had already left for another meeting.) The French Ambassador informed the German Ambassador, who as the local head of the EU Presidency, issued a statement of protest. However, neither Poloff nor OSCE interpreted the judges' remarks as an order to leave. Neither Poloff nor OSCE were asked to leave. Moreover, the OSCE representative and Poloff left and re-entered the courtroom repeatedly during recesses.

¶17. (C) During the days that followed, Belarusian authorities enhanced security despite much smaller crowds at the courthouse. These measures included additional OMON officers guarding the entrances to the courthouse and what appeared to be several two-man teams of plain-clothes police or soldiers checking identities and conducting foot patrols inside and outside the courthouse.

¶18. (C) On July 13, the judge called the trial to order to issue his verdict. Before the judge could do so, Kozulin immediately began shouting at the judge that the court was a "farce." Kozulin supporters began chanting everything Kozulin said. A few minutes later, at least 10 OMON officers entered the courtroom and ordered certain individuals to leave. The judge then ordered the entire court cleared. The international observers and Poloff slowly exited the courtroom. Several minutes later, the court granted permission to Poloff and an OSCE representative to observe the verdict.

The Government's Case

¶19. (C) The Belarusian government attempted to substantiate its case with testimony from witnesses including the administration of the Belarusian National Press Center and several officers from Belarusian security forces. Five members of the Special Forces of the Belarusian Interior Ministry, known as "Almaz," testified as "victims." One claimed to have received serious head injuries as the result of Kozulin's alleged coordination and participation in the violence. OSCE observers expressed skepticism to Poloff about the Almaz soldier's testimony since his account of where on his head he had been struck seemed to change each time he retold it.

Kozulin's Defense

¶10. (C) Kozulin's team argued that on point of law, Kozulin's conduct on February 17 and March 2 did not meet the definition of hooliganism under Belarusian statute, which requires malicious intent against Belarusian society, and that the administration of the National Press Center illegally ordered security personnel to prevent Kozulin's

entry. On point of fact, the defense refuted the disturbing the peace charge from March 25 by citing video played the previous day that purportedly showed Kozulin could not have disrupted traffic and endangered bystanders. Kozulin peppered the judge with a wide array of legal motions including requests to play a second video presentation, to allow Kozulin's daughter, who is an attorney, to participate in Kozulin's defense team, and to remove prosecutor Sergey Bortnik from the case. The judge refused all of Kozulin's legal motions.

¶11. (C) The judge permitted Kozulin to make a long defiant statement in which Kozulin questioned the legitimacy of the proceedings and refuted the charges against him, particularly the hooliganism charges. Kozulin insisted that these charges were politically motivated and that the government targeted him because of his election campaign against President Lukashenko. The judge also permitted Kozulin's defense team to cross-examine prosecution witnesses and to call several defense witnesses, including Kozulin's mother, a journalist from "Radio Svoboda," and attorney Oleg Volchek.

Kozulin's Wife on Strategy and Media

¶12. (C) During a recess on July 7, Poloff talked with Kozulin's wife, Irina Kozulina. Kozulina explained that the flurry of procedural motions was part of their defense strategy to draw out the trial into the week of the G-8 Summit in St. Petersburg so as to bring international attention to Kozulin's case. She hoped the presence of Western diplomats at the trial would elevate media attention. (Note: Poloff noticed several independent Belarusian journalists in the courtroom and subsequently saw extensive coverage of Kozulin's trial in independent Belarusian press.)

Kozulin's Condition

¶13. (C) Kozulin appeared thinner than he was during the election but did not appear to be unhealthy. Although reporters quoted (or misquoted) Kozulina as saying that Belarusian authorities had denied Kozulin food and water, she separately told Poloff the authorities had offered Kozulin only food and he refused to accept the food without water. Kozulina added that one of the guards told Kozulin to drink water from the toilet. During the last days of the trial, Kozulin appeared increasingly irritable, and press reports suggested that he suffered from dizziness.

Comment

¶14. (C) Belarusian authorities attempted to give this trial a veneer of transparency and rule of law. During the first half of the proceedings days, the judge granted Kozulin and his defense team considerable latitude to make statements and question witnesses. However, the court significantly curtailed the witness list in favor of the prosecution. The prosecution's witnesses, particularly the Almaz soldiers and the National Press Center administrators, lacked credibility during cross-examination. The sentence sends clear messages to Kozulin that he will not have another opportunity to challenge Lukashenko in the next presidential elections and to the international community on the eve of the G-8 Summit that Lukashenko defiantly ignores Western calls for political reform.
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